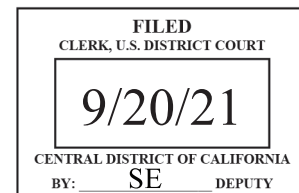


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Attorneys for Relator and Plaintiff-Relator



UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

[UNDER SEAL],

Plaintiffs,

v.

[UNDER SEAL],

Defendants.

CASE NO. CV 18-08311-ODW (AS)

SUPPLEMENTAL DECLARATION IN
SUPPORT OF *EX PARTE* APPLICATION
FOR LEAVE TO FILE FOURTH AMENDED
COMPLAINT

[FILED UNDER SEAL PURSUANT TO
THE FALSE CLAIMS ACT, 31 U.S.C. §§
3730(b)(2)]

[FILED IN CAMERA AND UNDER SEAL
PURSUANT TO 31 U.S.C. § 3730(b)(2)]

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA ex
rel. IONM LLC, a Delaware
corporation and ex rel. JUSTIN
CHEONGSIATMOY, M.D.; STATE
OF CALIFORNIA ex rel. IONM LLC,
a Delaware corporation and ex rel.
JUSTIN CHEONGSIATMOY, M.D.;
LOS ANGELES COUNTY ex rel.
IONM LLC, a Delaware corporation
and ex rel. JUSTIN
CHEONGSIATMOY, M.D.; and
JUSTIN CHEONGSIATMOY, M.D.,
in his individual capacity,

Plaintiffs,

vs.

UNIVERSITY OF SOUTHERN
CALIFORNIA, a California
corporation;

CASE NO. CV 18-08311-ODW (AS)

SUPPLEMENTAL DECLARATION IN
SUPPORT OF *EX PARTE* APPLICATION
FOR LEAVE TO FILE FOURTH AMENDED
COMPLAINT

**[FILED UNDER SEAL PURSUANT TO
THE FALSE CLAIMS ACT, 31 U.S.C. §§
3730(b)(2)]**

1 and
2 USC CARE MEDICAL GROUP,
3 INC., a California corporation,
4 Defendants.

5
6 **DECLARATION OF ALICE CHANG**

7 I, Alice Chang, declare as follows:

8 1. I am an attorney duly licensed to practice before the Central District of
9 California. I am counsel of record for both Relators IONM LLC and Justin
10 Cheongsiatmoy, M.D. and I am also counsel of record for Plaintiff-Relator Justin
11 Cheongsiatmoy, M.D. ("Plaintiff-Relator") in this action. I submit this supplemental
12 declaration in support of *Ex Parte* Application for Leave to File Fourth Amended
13 Complaint (the "*Ex Parte* Application"), and in response to the Court's September 10,
14 2021 Minute Order (the "Order") with respect thereto. I have personal knowledge of all
15 matters set forth herein and, if called to testify thereto, could and would competently do
16 so.

17 2. On behalf of Plaintiffs, I hereby renew Plaintiffs' application for leave to file
18 the Fourth Amended Complaint.¹

19 3. Below is a brief description of my and my co-counsel's efforts with the Los
20 Angeles District Attorney's Office ("LADA") in connection with the *Ex Parte*
21 Application:

22 a. On September 1, 2021, I contacted Steven Frankland, Head Deputy,
23 Healthcare Insurance Fraud Division from LADA regarding the stipulation AUSA Frank
24 Kortum had specifically requested for the filing of the Fourth Amended Complaint. After
25 I specifically emailed LADA and all other government lawyers working on this case the

26
27 ¹ We believe Federal Rule of Civil Procedure 5(a)(1) does not require this Supplemental Declaration
28 for *Ex Parte* Application to be served upon the United States, California or Los Angeles County.

1 proposed stipulation for their review and signature, all government parties except Los
2 Angeles County promptly signed the stipulation.

3 b. On September 2, 2021, I called Mr. Frankland at his direct office
4 number and asked that he return my phone call that same day. I also followed up with an
5 email on this day regarding the same.

6 c. On September 2, 2021, I also contacted Larry Droeger, the Bureau
7 Director for Los Angeles County Fraud & Corruption Prosecution for LADA as I believed
8 Mr. Droeger was Mr. Frankland's direct superior.

9 d. On the morning of September 3, 2021, I called both Mr. Droeger and
10 Mr. Frankland. In addition to leaving messages on their direct office numbers, I also
11 spoke directly with both of their assistants. The assistant for the Los Angeles County
12 Healthcare Insurance Fraud Division identified herself as "Heidi" and promised she
13 would pass on my message to Mr. Frankland that morning with my request that he
14 promptly return my call regarding a time-sensitive *Ex Parte* Application as it relates to
15 the filing of the Fourth Amended Complaint.

16 e. On September 3, 2021, Mr. Droeger informed me that Marc Beaart,
17 the former Head Deputy for the Los Angeles County Healthcare Insurance Fraud Division
18 previously assigned to this case was assuming Mr. Droeger's role as Bureau Director for
19 Los Angeles County Fraud & Corruption Prosecution for which Mr. Frankland, Head
20 Deputy, Healthcare Insurance Fraud Division would directly report to Mr. Beaart. I
21 promptly contacted Mr. Beaart and requested a call with him that afternoon or on the
22 morning of Tuesday September 7, 2021 at the latest.

23 f. On the morning of September 7, 2021, I called Mr. Beaart at the phone
24 number he provided me during the time he was assigned to this case. I also sent Mr.
25 Beaart and Mr. Frankland a follow-up email informing them that I had just left Mr. Beaart
26 a voicemail regarding the amendment and *Ex Parte* Application.

EXHIBIT A

Eliot Rushovich

From: Eliot Rushovich
Sent: Friday, September 10, 2021 3:51 PM
To: Marc Beaart; Steven Frankland
Cc: Alice Chang JD MBA; Elissa Croce; Lisa Watanabe-Peagler
Subject: [UNDER SEAL] CV 18-08311-ODW(AS) - Notice of September 10, 2021 Minute Order
Attachments: 2021-09-10-LA18CV8311-ODW - 4AC Notice of Minute Order.pdf

Counsel,

I am hereby serving by email the attached Notice of September 10, 2021 Minute Order, which attaches a minute order issued today by Judge Wright in connection with the above-referenced [UNDER SEAL] case. Per the Court's Order (in the final paragraph), I would appreciate your contacting me and Ms. Chang by September 17, 2021 with an affirmative response as to whether you will stipulate to the filing of the Fourth Amended Complaint.

Thank you,
Eliot



ELIOT RUSHOVICH | MANAGING PARTNER

Direct Phone: 310.728.6003 | **Main Phone:** 310.728.6588

Fax: 310.728.6560 | **Web:** riselawfirm.com

Address: 8383 Wilshire Blvd., Suite 315, Beverly Hills, CA 90211

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

[UNDER SEAL],

Plaintiffs,

v.

[UNDER SEAL],

Defendants.

CASE NO. CV 18-08311-ODW (AS)

NOTICE OF SEPTEMBER 10, 2021
MINUTE ORDER

**[FILED UNDER SEAL PURSUANT TO
THE FALSE CLAIMS ACT, 31 U.S.C. §§
3730(b)(2)]**

[FILED/LODGED CONCURRENTLY
UNDER SEAL: [PROPOSED] ORDER;
DECLARATION OF ELIOT J. RUSHOVICH;
[PROPOSED] FOURTH AMENDED
COMPLAINT]

**[FILED IN CAMERA AND UNDER SEAL
PURSUANT TO 31 U.S.C. § 3730(b)(2)]**

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Attorneys for Relator and Plaintiff-Relator

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA ex
rel. IONM LLC, a Delaware
corporation and ex rel. JUSTIN
CHEONGSIATMOY, M.D.; STATE
OF CALIFORNIA ex rel. IONM LLC,
a Delaware corporation and ex rel.
JUSTIN CHEONGSIATMOY, M.D.;
LOS ANGELES COUNTY ex rel.
IONM LLC, a Delaware corporation
and ex rel. JUSTIN
CHEONGSIATMOY, M.D.; and
JUSTIN CHEONGSIATMOY, M.D.,
in his individual capacity,

Plaintiffs,

vs.

UNIVERSITY OF SOUTHERN
CALIFORNIA, a California
corporation;

CASE NO. CV 18-08311-ODW (AS)

NOTICE OF SEPTEMBER 10, 2021
MINUTE ORDER

**[FILED UNDER SEAL PURSUANT TO
THE FALSE CLAIMS ACT, 31 U.S.C. §§
3730(b)(2)]**

[FILED/LODGED CONCURRENTLY
UNDER SEAL: [PROPOSED] ORDER;
DECLARATION OF ELIOT J. RUSHOVICH;
[PROPOSED] FOURTH AMENDED
COMPLAINT]

1
2 Dated: September 10, 2021

RISE LAW FIRM, PC

3 By: 

4 ELIOT J. RUSHOVICH

5 Attorneys for Justin Cheongsiatmoy,
6 M.D., in his individual capacity
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EXHIBIT A

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CASE SEALED

CIVIL MINUTES – GENERAL

No.	2:18-cv-08311-ODW (ASx)	Date	September 10, 2021
Title	<i>United States of America et al v. University of Southern California</i>		

Present: The Honorable	Otis D. Wright, II, United States District Judge		
Sheila English	Not reported		N/A
Deputy Clerk	Court Reporter / Recorder		Tape No.
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:		
Not present	Not present		

Proceedings (In Chambers):

One of the prerequisites to a PAGA suit is notice to the Labor Workforce Development Agency (LWDA). In order to bring suit under PAGA, a plaintiff must first file a notice with the Labor and Workforce Development Agency of intent to initiate an action. The LWDA may then (1) notify the plaintiff of the LWDA's intent to investigate the violation on its own; (2) within 60 days of receipt of the notice, notify the plaintiff that it does not intend to investigate the violation; or (3) do nothing. If the LWDA elects the first option, the plaintiff may not bring suit; otherwise, the plaintiff may initiate a PAGA action. Cal. Lab. Code, § 2699.3(a)(1).

A related provision of PAGA provides:

Notwithstanding any other provision of law, a plaintiff may as a matter of right amend an existing complaint to *add* a cause of action arising under this part at any time within 60 days of the time periods specified in this part.

Cal. Lab. Code, § 2699.3(a)(2)(C) (emphasis added).

The operative Third Amended Complaint in this matter, ECF No. 70, contains a cause of action under the California Private Attorneys General Act (PAGA), along with an indication that Plaintiffs will amend the pleading at the appropriate time to add LWDA notice allegations.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

No.	2:18-cv-08311-ODW (ASx)	Date	September 10, 2021
Title	<i>United States of America et al v. University of Southern California</i>		

On Tuesday, September 7, 2021, Plaintiff-Relator and Relator (“Movants”) applied ex parte for leave to file a Fourth Amended Complaint in this matter. The stated purpose of amendment is to add to the PAGA claim certain necessary allegations regarding notice to the California Labor Workforce Development Agency (LWDA). Movants represent that they moved ex parte because the sixty-day deadline for amending to add a PAGA claim by right is set to expire on September 13, 2021.

Movants misinterpreted and misapplied Labor Code section 2699.3(a)(2)(C) in three senses. First, the Court compared the Third Amended Complaint to the Proposed Fourth Amended Complaint. There are many differences between the two pleadings that go beyond merely adding allegations that Movants satisfied the LWDA notice requirements. As one example, paragraphs 441 and 442, which have nothing to do with LWDA notice, have been heavily edited. Section 2699.3(a)(2)(C) allows parties to add a PAGA claim under certain circumstances; it does not allow parties to make extensive substantive and stylistic changes to their pleading.

Second, the statutory right to amend is a right to “add” a PAGA claim, not to amend a pre-existing PAGA claim. Here, Movants already asserted a PAGA claim in their Third Amended Complaint. Nothing about section 2699.3(a)(2)(C) suggests that a plaintiff gains a 60-day right of general-purpose amendment following receipt of right to sue from the LWDA (whether by the LWDA’s action or inaction).

Third, unless the statute otherwise specifies, when a statute sets forth a deadline for moving for some sort of relief from the court, the deadline typically refers to the date by which the movant must move, not the date by which the Court must issue a ruling. Nothing about Labor Code section 2699.3(a)(2)(C) suggests that the Court must issue any sort of ruling within a 60-day period.

For these three reasons, Labor Code section 2699.3(a)(2)(C) does not apply, and for these same three reasons, Movants should not have applied ex parte. Counsel is cautioned that ex parte relief should only be sought where there is a true exigency based on sound application of the law. Here, there is no exigency because the 60-day window is unmistakably inapplicable to Movants’ proposed amendment. Moreover, Movants’ application fails to address additional

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

No.	2:18-cv-08311-ODW (ASx)	Date	September 10, 2021
Title	<i>United States of America et al v. University of Southern California</i>		

requirements for ex parte relief as set forth in *Mission Power Eng'g Co. v. Cont'l Cas. Co.*, 883 F. Supp. 488, 493-94 (C.D. Cal. 1995).

That said, the Court is willing to consider the merits of this ex parte application to amend, apart from any deadline or authority provided by PAGA. Allowing amendment of the pleading while the case is still sealed appears permissible in most False Claims Act cases because it typically does not cause unfair prejudice to the defendant, who has yet to be served or notified of the government investigation. Nevertheless, Movants have been instructed to obtain the consent of all four participating government entities in obtaining stipulations for leave to amend. (Decl. of Eliot J. Rushovich ¶ 12, currently under seal.) In this instance, despite diligent effort, Movants have only obtained the consent of three of the four. (*Id.* ¶¶ 13–15.) Movants were not able to obtain the consent of the Los Angeles County District Attorney's Office (LADA) by the time they filed their ex parte application. (*Id.* ¶ 15.) At the same time, LADA has not expressly opposed this amendment. (*Id.* ¶ 16.)

Based on these observations, the Court orders as follows.

Movants shall immediately transmit this Minute Order to LADA, directing LADA's attention to this final paragraph. If by **September 17, 2021**, LADA has not provided Movants with an affirmative response regarding whether it will stipulate to the filing of the Fourth Amended Complaint, LADA shall be deemed to have stipulated to the amendment. If there is no stipulation and no response, on or after **September 20, 2021**, Movants shall submit a short supplemental attorney declaration that (1) renews Movants' application for leave to amend and (2) briefly describes Movants' efforts with LADA. Movants shall submit their supplemental declaration no later than **September 22, 2021**. Thereafter, an order on leave to amend will issue. Movants' failure to timely submit a supplemental declaration will result in denial of the application.

IT IS SO ORDERED.

_____ : _____ 00

Initials of Preparer SE _____

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: 8383 Wilshire Boulevard, Suite 315 in Beverly Hills, California 90211. On **September 10, 2021**, I served the foregoing document(s) that, as indicated therein, are described as:

NOTICE OF SEPTEMBER 10, 2021 MINUTE ORDER

On the following interested party(-ies):

Los Angeles County

Marc Beaart, Bureau Director, Los Angeles County Fraud & Corruption
Prosecution

Email: mbeaart@da.lacounty.gov

Steven Frankland, Head Deputy, Healthcare Insurance Fraud Division

Email: sgfrankl@da.lacounty.gov

☒ **(BY ELECTRONIC MAIL)** By causing a true and correct copy of the above document(s) to be transmitted to the email address(es) of the addressee(s) designated.

☐ **(REGULAR MAIL)** By placing a true and correct copy of the above document(s) in a sealed envelope addressed as indicated above and placing such envelope for collection and mailing on the date set forth above following this firm's ordinary business practice. I am readily familiar with this firm's practice of collection and processing correspondence for mailing. Under that practice a correspondence would be deposited with the U.S. Postal Service on the same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business.

☐ **(BY FEDERAL EXPRESS, AN OVERNIGHT DELIVERY SERVICE)** By placing a true and correct copy of the above document(s) in a sealed envelope addressed as indicated above and causing such envelope(s) to be delivered to the FEDERAL EXPRESS Service Center, and to be delivered by their next business day delivery.

☐ **(HAND DELIVERY)** By placing a true and correct copy of the above document(s) in a sealed envelope addressed as indicated above and causing such envelope(s) to be delivered by hand to the addressee(s) designated through One Legal.

I declare under penalty of perjury under the laws of the United States that the above is true and correct.

Executed on **September 10, 2021** in Laguna Hills, California.

Eliot J. Rushovich



[Name Of Person Executing Proof]

[Signature]